

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DUANE ANGELO GITTENS,

Petitioner,

v.

UNKNOWN,

Respondent.

No. 2:22-cv-01708-KJM-EFB (HC)

ORDER

Petitioner is a state prisoner without counsel. He has captioned this action as a “petition [to] the court to file [an] original bill of lading.” ECF No. 1 at 1. He has paid the \$5 filing fee appropriate for habeas actions.^{1 2} Petitioner’s filing, however, does not sound in habeas. As discussed below, the petition must be dismissed. *See* Rule 4, Rules Governing § 2254 Cases (requiring summary dismissal of habeas petition if, upon initial review by a judge, it plainly appears “that the petitioner is not entitled to relief in the district court”).

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¹ A civil action, by contrast, requires the filing of a complaint and carries a \$402 filing fee. Fed. R. Civ. P. 3; 28 U.S.C. § 1914.

² On December 9, 2022, the court recommended that this action be dismissed because petitioner had neither paid the filing fee nor sought leave to proceed in forma pauperis. ECF No. 11. In light of petitioner’s payment of the filing fee, the December 9, 2022 findings and recommendations are withdrawn.


Challenges to the validity of one's confinement or the duration of one's confinement are properly brought in a habeas action. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)). A bill of lading, by contrast, is a written contract that "records that a carrier has received goods from the party that wishes to ship them, states the terms of carriage, and serves as evidence of the contract for carriage." *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 18-19 (2004). It is not clear what relief petitioner seeks, if any. To the extent petitioner wishes to pursue a breach of contract claim, he must do so by way of a civil complaint.

Accordingly, IT IS ORDERED that the December 9, 2022 findings and recommendations (ECF No. 11) are withdrawn.

Further, IT IS RECOMMENDED that this action be dismissed without prejudice to the filing of a civil complaint alleging breach of contract.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: June 9, 2023.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE